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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4402 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VARDHMAN RAJKUMAR JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4402 of 2001

MR YM THAKKAR for Petitioner No. 1

MR HL JANI ASTT GOVERNMENT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/08/2001

ORAL JUDGEMENT

#. Heard Mr.Y.M.Thakkar, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing for respondent Nos.1 to 3 and Ms.P.J.Dawawala, learned advocate appearing on behalf of the respondent

No.4 - Union of India.

#. In the present petition, the order of detention dated 8th May, 2001 passed by the District Magistrate, Dahod under the provisions of PBM Act is challenged by the petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the District Magistrate, Dahod under Section 3[2] of the PBM Act. The grounds of detention are communicated and supplied to the petitioner under Section 8[1] of the PAM Act. The respondents - State Government has filed a reply so also the respondent No.4 has also filed affidavit-in-reply and the detaining authority has also filed the affidavit in reply. All the replies are on record of the case.

#. Learned advocate Mr.Y.M.Thakkar appearing on behalf of the petitioner has challenged the detention order on the ground that at the time of passing the detention order by the detaining authority, whatever materials were considered against the present petitioner on 8th May, 2001, where subsequently by order dated 18th May, 2001, the detaining authority has deleted Issue No.2 - Sr.No.5 - Para 2 and 3 pertaining to breach of Section 4 of The Edible Oil Packaging Regulation Order, 1998. This change has been brought into effect deleting the charges of breach of Section 4 of the Edible Oil Packaging Regulation Order , 1998 not informed to the State Government by the detaining authority. Therefore, the learned advocate Mr.Y.M.Thakkar has submitted that in such circumstances, when initially the order was passed, this was one of the grounds of detention for passing the detention order against the present petitioner, wherein subsequently this relevant ground of detention has been deleted and therefore it is the duty of the detaining authority to reconsider the matter in light of deletion dated 18th May, 2001 whether the continued detention of the petitioner is justified or not ? Learned advocate Mr.Y.M.Thakkar has also pointed out and raised contention that the said deletion by order dated 18th May, 2001 has been forwarded to the State Government before approving the order of detention. He also submitted that the order of detention has been approved on 19th May, 2001 and before the approval of the said order, this fact was not brought to the notice of the State Government and therefore, subsequent change of deleting some of the grounds of detention, adversely affected the continued detention of the petitioner. He also submitted that when initially the entire grounds of detention has been taken into account by the detaining authority for passing the detention order and subsequently if some of the grounds

of detention are deleted, then it was the duty of the detaining authority to see that the deletion of some of the grounds of detention whether justify continued detention or not ? This aspect has not been taken into account by the detaining authority. Therefore, according to his submission, the order of detention is required to be quashed and set aside. Learned advocate Mr.Y.M.Thakkar has submitted that a specific contention has been raised by the petitioner in ground [n] to the effect that the detaining authority has deleted the grounds mentioned in para 2 & 3 of the detention order subsequently on 18th May, 2001 after the detention order has been executed and implemented. This clearly shows that subjective satisfaction arrived at by the detaining authority while passing the detention order on 8th May, 2001 was illegal and erroneous and therefore, this is clear non application of mind on the part of the detaining authority and hence also, the order of detention is required to be quashed and set aside. In ground [o], the contention raised by the petitioner to the effect that the detaining authority after amending the detention order subsequently on 18th May, 2001 has not sent the amended grounds of detention for approval to the State Government and therefore also, the order of detention is vitiated. Learned advocate Mr.Y.M.Thakkar has also submitted that in response to the contention raised by the petitioner in ground [n] and [o], the detaining authority - respondent has given reply in para-18 and 19 but there is no specific reply or reason given by the detaining authority. On the contrary, irrelevant reply has been given by the detaining authority in respect of ground [n] that all the documents have been supplied along with the order of detention to the petitioner on 18-5-2001, whereas the reply in respect of ground [o] is that after passing the order of detention, all the necessary documents along with the order of detention were forwarded to the State Government on 18th May, 2001 and thereafter, the State of Gujarat has approved the order of detention on 19th May, 2001 i.e. within the period of limitation prescribed under the Act. In light of this contention and the reply, learned advocate Mr.Y.M.Thakkar appearing on behalf of the petitioner has submitted that the detaining authority has not applied his mind at the time of passing of the detention order and irrelevant grounds of detention was taken into consideration which was subsequently deleted by the detaining authority. In such circumstances, it was the duty of the detaining authority and the State Government to pass a fresh order and not to amend the grounds of detention. The amendment in the grounds of detention by way of deletion can not justify earlier

subjective satisfaction of the detaining authority at the time of passing of the detention order on 8th May, 2001. Therefore, according to him, the order of detention is required to be quashed and set aside.

#. Mr.H.L.Jani, learned AGP appearing on behalf of the respondents - State has submitted that the detaining authority has rightly deleted the irrelevant ground from grounds of detention and the same are communicated to the petitioner in time so also communicated to the State Government in time and subsequently, the Government has approved the detention order. He submitted that because of deletion of some of the grounds of detention, order of detention cannot be vitiated. He relied upon para-18 and 19 of the reply given by the detaining authority. He submitted that looking to the materials, facts and circumstances which are on record, there was compelling circumstances for the detaining authority to pass the detention order and have no option, otherwise the activities which have been carried out by the petitioner would have adversely affected the public at large. Therefore, according to him, the order of detention is legal and valid and interference of this Court is not warranted in any manner.

#. Learned advocate Ms.P.J.Dawawala, appearing on behalf of the respondent No.4 has supported the detention order and submitted that looking to the facts and circumstances and further considering the materials which are on record, the detaining authority has rightly exercised the powers and order of detention is therefore legal and valid and no interference of this Court is called for.

#. I have considered the submission of the learned advocates for the parties. One undisputed fact remains between the parties that the order of detention dated 8th May, 2001 passed by the detaining authority against the present petitioner. Thereafter from the grounds of detention, para-2 and 3 are deleted by the detaining authority by order dated 18th May, 2001, meaning thereby, initially at the time of passing of the order of detention, para-2 & 3 of the grounds of detention were considered and relied by the detaining authority. Thereafter, the aspect, whether such deletion whether having any effect on continued detention of the petitioner or not and this aspect has been grossly ignored and overlooked by the detaining authority while deleting the relevant para 2 & 3 of the grounds of detention. A specific contention has been raised by the petitioner in ground [n] and [o] of the petition and even in the reply of the detaining authority, there is no

specific answer given by the detaining authority. On the contrary, irrelevant reply has been given by the detaining authority. It is also not clear from the reply that deletion of para-2 & 3 by order dated 18th May, 2001 has been sent to the State Government before approving the order of detention or not and this fact is also not reflected from the reply. Therefore, it is the duty of the detaining authority to justify that the deletion of grounds of detention by order dated 18th May, 2001 was brought to the notice of the State Government before approving the order of detention. But there was no specific reply given by the detaining authority and therefore, the order of detention dated 8th May, 2001 which has been approved by the State Government without considering the deletion of para-2 & 3 of the detention order and therefore, it amounts to non application of mind by the State Government while approving the detention order. The detaining authority has failed to consider this important aspect that the grounds of detention which was supplied to the petitioner on 8th May, 2001, wherein the deletion has been made by the detaining authority having any effect of continued detention of the petitioner or not. This aspect has been totally ignored by the detaining authority. At this juncture, the relevant provisions of Section 8 of the Act, which clearly provides that when a person is detained in pursuance of the detention order, the authority making the order shall as soon as may be but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than 10 days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him an earliest opportunity of making a representation against the order to the appropriate Government. Therefore, ordinarily from the date of detention order within 5 days, the grounds of the detention are required to be supplied to the petitioner. In the present case, on the basis of the order of detention dated 8th May, 2001, the grounds of detention has been supplied immediately but after 10 days, there was deletion in the grounds of detention and therefore, relevant Section 8 which requires to communicate the grounds of detention within 5 days period, is clearly violated and no exceptional circumstances or no reasons seems to have been recorded in writing nor has been pointed out before this Court in affidavit in reply by the State Government. Therefore, considering this aspect and looking to the facts which are on record that at the time of passing the detention order by the detaining authority, all the grounds of detention have been taken into account and the same has been considered against the

present petitioner and after having reached to the subjective satisfaction in respect of all the grounds of detention, the order of detention has been passed on 8th May, 2001. But thereafter, there was deletion of para-2 & 3 of the grounds of detention. Therefore, after deletion whether the subjective satisfaction is established or justified from the record that aspect has been totally ignored by the detaining authority. Not only that but this deletion of certain grounds of detention has not been brought to the notice of the State Government before approval of the order of detention. In light of this fact, according to my opinion, the detaining authority has failed to consider the fact of change / deletion of some of the grounds in consonance with continued detention of the petitioner and accordingly the aspect, whether subjective satisfaction is justified or established even after deletion of para2 and 3 of the grounds of detention or not, has not been considered by the detaining authority at the time of deleting para-2 & 3 of the grounds of detention. Therefore, the order of detention is required to be quashed and set aside.

#. In the result, the present petition is allowed. The order of detention passed by the District Magistrate, Dahod dated 8th May, 2001 is hereby quashed and set aside. The present petitioner - detenu - Shri Vardhaman Rajkumar Jain [Pavecha] who has been detained at Jamnagar District Jail is ordered to be released immediately if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 9-8-2001 [H.K.Rathod, J.]

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